

**STATE OF INDIANA  
Board of Tax Review**

UNITED STATES BRASS CORPORATION/ ZURN QUEST	) On Appeal from the Elkhart County ) Auditor )
Petitioner,	)
	) Review of the Claim for Enterprise ) Zone Personal Property Tax Credit )
v.	)
ELKHART COUNTY AUDITOR	) Petition No. 20-005-01-4-0-10000 )
Respondent	) Assessment Year: 2001

**Findings of Fact and Conclusions of Law**

On January 1, 2002, pursuant to Public Law 198-2001, the Indiana Board of Tax Review (IBTR) assumed jurisdiction of all appeals then pending with the State Board of Tax Commissioners (SBTC), or the Appeals Division of the State Board of Tax Commissioners (Appeals Division). For convenience of reference, each entity (the IBTR, SBTC, and Appeals Division) is hereafter, without distinction, referred to as "State". The State having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following.

**Issue**

Whether United States Brass Corporation/Zurn Quest (US Brass) is entitled to an Enterprise Zone Business Personal Property Tax Credit (EZ Credit) for the 2001 assessment year.

## **Findings of Fact**

1. If appropriate, any finding of fact made herein shall also be considered a conclusion of law. Also, if appropriate, any conclusion of law made herein shall also be considered a finding of fact.
  
2. Pursuant to Ind. Code § 6-1.1-20.8-3 (b), Mr. B. Keith Shake of Henderson Daily Withrow & DeVoe, on behalf of US Brass, filed a written request for review of the Claim for Enterprise Zone Business Personal Property Tax Credit (Form EZ-1) by the State. The request was filed September 19, 2001. The County Auditor denied the Form EZ-1 on August 23, 2001.
  
3. The request for review and attachments are labeled Board Exhibit A. It should be noted that the request for review references the March 1, 2000 assessment date. However, the attachments to the request for review which include the Form EZ-1, Form EZB-R, extension for Form EZB-R, and the denial notice all refer to the March 1, 2001 assessment date. The State will review this request for the March 1, 2001 assessment date.
  
4. The subject property is located at 1900 West Hively Avenue, Elkhart, Concord Township, Elkhart County.

## **Enterprise Zone Business Personal Property Tax Credit**

5. In accordance with case law, the State may consider a late-filed application for the Enterprise Zone Business Personal Property Tax Credit. *Graybar Electric Co. v. State Board of Tax Commissioners*, 723 N.E. 2d 491 (Ind. Tax 2000). The Tax Court in *Graybar* references *State Board of Tax Commissioners of Indiana v. New Energy Company of Indiana*, 585 N.E. 2d 38 (Ind. App. 1992). As a result of *New Energy*, the State considers the totality of the facts and circumstances in determining whether or not to approve a late-filed deduction application (see 50 IAC 10-4-2).

6. The State has adopted seven (7) factors to guide the exercise of its discretion in determining whether to grant late-filed applications. 50 IAC 10-4-2 (b).
7. On January 10, 2002, the State sent a letter to US Brass and Mr. Shake giving them the opportunity to address the seven (7) factors. The State's letter is labeled as Board Exhibit B.
8. Mr. Shake submitted a written response with attachments on February 11, 2002. The attachments include a letter of authorization from Zurn Industries to Deloitte & Touche LLP, dated January 1, 2000, change of address notification from Deloitte & Touche, LLP to Elkhart County Appraisal District, dated May 31, 2000, a copy of the Form EZ-1, a copy of the Form EZB-R, a copy of the EZB-E, a copy of the denial of the Form EZ-1 from the Elkhart County Auditor, a copy of the 2001 Forms 104, 103, and 106, a copy of the Tax Court case of *Consolidated Systems, Inc. v. State Board of Tax Commissioners*, No. 49T10-9704-TA-149, and a copy of the Tax Court case of *The Dalton Foundries, Inc., v. State Board of Tax Commissioners*, No. 49T10-0001-TA-5.

### **Conclusions of Law**

1. Indiana courts have long recognized the principle of exhaustion of administrative remedies and have insisted that every designated administrative step of the review process be completed. *State v. Sproles*, 672 N.E. 2d 1353 (Ind. 1996); *County Board of Review of Assessments for Lake County v. Kranz* (1964), 224 Ind. 358, 66 N.E. 2d 896. Regarding the filing of a Form EZ-1, the levels of review are clearly outlined by statute. First, the Form EZ-1 is filed with the County and acted upon by the County Auditor. Ind. Code § 6-1.1-20.8. If the taxpayer disagrees with the County Auditor's action on the Form EZ-1, then a written request for review may be filed with the State. Ind. Code § 6-1.1-20.8-3 (b).

2. The State is the proper body to hear an appeal of the action of the County Auditor pursuant to Ind. Code § 6-1.1-20.8-3 (c).

### **A. Burden**

3. It is a fundamental principle of administrative law that the burden of proof is on the person petitioning the agency for relief. 2 Charles H. Koch, Jr., *Administrative Law and Practice*, § 5.51; 73 C.J.S. Public Administrative Law and Procedure, § 128.
4. The taxpayer is required to meet his burden of proof at the State administrative level for two reasons. First, the State is an impartial adjudicator, and relieving the taxpayer of his burden of proof would place the State in the untenable position of making the taxpayer's case for him. Second, requiring the taxpayer to meet his burden in the administrative adjudication conserves resources.
5. To meet his burden, the taxpayer must present probative evidence in order to make a prima facie case. In order to establish a prima facie case, the taxpayer must introduce evidence "sufficient to establish a given fact and which if not contradicted will remain sufficient." *Clark*, 694 N.E. 2d at 1233; *GTE North, Inc. v. State Board of Tax Commissioners*, 634 N.E. 2d 882, 887 (Ind. Tax 1994).

### **B. Enterprise Zone Business Personal Property Tax Credit**

6. Pursuant to Ind. Code § 6-1.1-20.8-2, a person that files a timely personal property return must file the application for Enterprise Zone Business Personal Property Tax Credit (Form EZ-1) between March 1 and May 15 of that year in order to obtain the credit. A person that obtains a filing extension under Ind. Code § 6-1,1-3-7 (b) for an assessment year must file the application between March 1 and June 14 of that year in order to obtain to credit.

7. The State has the legal authority to consider a late-filed application for the Enterprise Zone Business Personal Property Tax Credit. *Graybar Electric Co. v. State Board of Tax Commissioners*, 723 N.E. 2d 491 (Ind. Tax 2000). In *Graybar*, the Tax Court references *State Board of Tax Commissioners of Indiana v. New Energy Company of Indiana* (Ind. App. 1992), 585 N.E. 2d 38.
8. In considering a late-filed application, the State shall consider all of the relevant facts and circumstances, and determine if it is more equitable to grant or to deny the EZ credit application.
9. The State has adopted seven (7) factors to guide the exercise of its discretion in determining whether to grant late-filed applications. 50 IAC 10-4-2 (b). The Petitioner was informed of the seven (7) factors and had the opportunity to present evidence on these factors. See finding No. 7, above. The factors and the response to each factor are as follows...

#1. Whether the failure to timely file the application resulted from an act of God, or from the death or serious illness of the person principally responsible for the filing of the deduction application. (*To the extent possible, the taxpayer should provide documentary evidence supporting its contention*).

**The Petitioner's failure to file a timely 2001 Form EZ-1 did not result from an act of God or the death or illness of the person responsible for the completion of the form.**

#2. Whether the approval of the late-filed application would result in the loss of property tax revenues to the taxing units affected by the deduction. (*The taxpayer should submit a written statement signed by the County Auditor stating whether approval would result in the loss of tax revenues*).

**The Petitioner did not address this factor.**

**However, based on the filing date of the application, the credit amount would not have been taken into consideration for budget purposes. Therefore, approval of the late-filed application would result in a loss of property tax revenues.**

- #3. Whether a public official gave misleading information to the taxpayer that was the proximate cause of the late-filing, and whether it was reasonable for the taxpayer to rely on that misleading information. *(To the extent possible, the taxpayer should provide documentary evidence supporting its contention).*

**The Petitioner did not address this factor. There is no indication that the Petitioner was given misleading information.**

- #4. Whether the lapse between the filing deadline and the date on which the application was actually filed would have prevented local officials from accurately determining the assessed value for budget, rate and levy purposes.

**The Form EZ-1 for the March 1, 2001 assessment date was filed on August 20, 2001, more than three months after the due date. Based on the filing date of the application, the local officials would have been prevented from accurately determining the assessed value for budget, rate and levy purposes.**

- #5. Whether there is substantial evidence that local officials support the approval of the late-filed application, even if such approval would result in a loss in tax revenues. *(The taxpayer should provide written documentary evidence including written statements from local officials, including the local Enterprise Zone Board, indicating support for the approval of the application, notwithstanding the fact that the application was filed late).*

**The Petitioner did not address this factor. There is no evidence to show that the local officials would support the approval of the late-filed application.**

**#6. Whether the late-filing was not due to the taxpayer's negligence.**

**In the Petitioner's letter dated September 19, 2001, the Petitioner contends that "had the local officials sent the Form 103 series package, including the Form EZ-1, directly to the attorney-in-fact for U.S. Brass, the Form EZ-1 would have been prepared and filed as was the Form 103." The Petitioner contends the omission of the Form EZ-1 is excusable due to the failure of the local officials to provide the Form EZ-1 to the authorized representative of U.S. Brass. The Petitioner also points to the lack of any reference to the Form EZ-1 within the Form 103.**

**The State notes that while the local officials are responsible for making forms available, there is nothing that requires the local officials to deliver or mail forms to the taxpayer. Pursuant to 50 IAC 4.2-2-2, "It is the responsibility of the taxpayer to obtain forms from the assessor and file a timely return in compliance with this article." The Petitioner has an obligation to know the rules and regulations of a state it does business in. The State notes that both the Indiana Code § 6-1.1 and Regulation 16 (50 IAC 4.2) provide the filing requirements for business personal property and information about the credits, deductions, and exemptions available. The State is unable to conclude that the late filing was not due to the Petitioner's negligence.**

**#7. Any other factor that the State Board considers relevant.**

**The Petitioner contends that the focus should be on the merits of the application; i.e., was the property located in an enterprise zone and did it qualify for the credit. The Petitioner contends the answer is yes.**

**As stated previously, the State considers the totality of the facts and circumstances in determining whether or not to approve a late-filed application. The Petitioner was given the opportunity to present evidence to help the State determine if it is more equitable to grant or to deny the EZ credit application. The Petitioner presented no information to show whether the credit amount was taken into consideration for budget purposes, whether the approval would result in a loss or property tax revenue, or whether any of the local officials would the approval of the late filed application.**

10. After careful consideration of the facts and circumstances of this situation, the State hereby denies US Brass' EZ credit for the 2001 assessment year.

The above stated findings and conclusions are issued in conjunction with, and serve as the basis for, the Final Determination in the above captioned matter, both issued by the Indiana Board of Tax Review this \_\_\_\_\_ day of \_\_\_\_\_ 2002.

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Chairman, Indiana Board of Tax Review